

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

MONTRICIA PITTMAN,]
[
Plaintiff,]
[
vs.] Case Number: 2:06CV507-WKW
[
MONTGOMERY COUNTY SHERIFF'S]
DEPARTMENT; and D.T. MARSHALL,]
[
Defendants.]

**AMENDED AND RESTATED MOTION TO DISMISS OF DEFENDANTS
MONTGOMERY COUNTY SHERIFF'S DEPARTMENT
AND SHERIFF D.T. MARSHALL**

COME NOW the Defendants identified in the Complaint as the "Montgomery County Sheriff's Department," and Sheriff D.T. Marshall, pursuant to Rule 12(b), Fed. R.Civ. P., and amend and restate their previously-filed Motion to Dismiss (Doc. # 6) and request that the Court dismiss Plaintiff's Complaint, as amended. Defendants show as follows:

1. Plaintiff's claims against the Defendant identified in the Complaint as the "Montgomery County Sheriff's Department" should be dismissed because the "Montgomery County Sheriff's Department" is not an entity capable of being sued. *Dean v. Barber*, 951 F.2d 1210, 1214 (11th Cir. 1992).
2. Plaintiff has failed to adequately plead a claim for sex discrimination.
3. Plaintiff has failed to adequately plead a claim for retaliation.
4. Plaintiff's Complaint is due to be dismissed for failure to satisfactorily exhaust administrative remedies.

WHEREFORE, THE PREMISES CONSIDERED, Defendants move this Court to dismiss Plaintiff's Complaint and grant them any other relief to which they may be entitled.

s/ Constance C. Walker
Thomas T. Gallion, III (ASB-5295-L74T)
Constance C. Walker (ASB-5510-L66C)

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of June, 2007, I electronically filed the foregoing with the Clerk of the Court using the **CM/ECF** system that will send notification of such filing to the following counsel:

Deborah M. Nickson
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s/ Constance C. Walker
Of Counsel